

# **EXHIBIT 5**

**From:** Lacy, Michael E.  
**Sent:** Wednesday, April 29, 2020 10:38 AM  
**To:** Peterson, Ashley P.; Cooper, Massie P.; Justus, J. Brent; Noonan, Jeanne E.; Hatch, Benjamin L.; Dougherty, V. Kathleen; Gollogly, Krystal Lynne; Wingfield, Alan D.; Lynch, John C.; Knudsen, Kathleen M.; Monica McCarroll; jchapman@cwm-law.com; wrsnow@cwm-law.com; ddavenport@cwm-law.com; dhartnett@cwm-law.com; tara.reinhart@skadden.com; john.thornburgh@skadden.com; thomas.gentry@skadden.com; Stephanie Hunter; Armond Joyner; Stone, Jana K.  
**Subject:** RE: CSXT, et al v. NS, et al - Discovery Deficiencies  
**Attachments:** NSR.Armbrust Redacted Documents.20200427.XLSX; NSR.Armbrust Withheld Documents.20200427.XLSX; CSXT0082613.pdf; CSXT0081955.pdf; CSXT0124808.pdf; CSXT0124810.pdf; CSXT0082079.pdf; CSXT0124768.pdf; CSXT0082724.pdf

Ashley, et al.—

I hope everyone is safe and healthy during this crazy time. I am following up CSXT's March 23 supplemental production and the updated privilege log it produced on the same day. We have continued to review the emails (a) dated when Mr. Armbrust was a NPBL board member; (b) Mr. Armbrust was the only attorney involved, and (c) the subject line and/or unredacted portions of the email indicate that it relates to NPBL business. We excluded from our review the handful of emails that were marked "privileged" or "confidential", giving CSXT the benefit of the doubt that those emails are privileged.

Based on our review, the remaining 229 redacted/withheld emails meeting this criteria do not appear to meet the requirements of a privileged communication, including because they are not for the purpose of giving or receiving legal advice, and thus should not be redacted/withheld on privilege grounds. We have attached for your reference two spreadsheets (one of redacted emails, the other of withheld emails) identifying these 229 emails.

Many of these emails were previously identified in our March 10 letter to you, and all meet the criteria initially set out in that letter. Per Brent's March 20 letter, we understand that CSXT contends that the emails identified in our March 10 letter that were not included in its supplemental production are appropriately redacted/withheld based on privilege. Therefore, we are proposing that the parties agree to submit the 229 emails to the Court for an in camera review.

In addition to the emails identified on the attached spreadsheets, we believe that the redactions in the attached emails should be removed. Based on the unredacted portion of these emails, the emails relate to business matters and do not include privileged communications. To the extent that CSXT is unwilling to remove the redactions, we propose that these emails be submitted to the Court for an in camera review too.

We would appreciate a response by 5 pm Friday, May 1. If we do not hear from you by then, we will presume that CSXT is unwilling to produce these emails without redaction or to submit them to the Court for an in camera review.

Thank you.

**Michael E. Lacy**  
**troutman sanders**  
Direct: 804.697.1326  
michael.lacy@troutman.com

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**From:** Peterson, Ashley P. <APeterson@mcguirewoods.com>

**Sent:** Monday, March 23, 2020 2:29 PM

**To:** Cooper, Massie P. <Massie.Cooper@troutman.com>; Justus, J. Brent <bjustus@mcguirewoods.com>; Noonan, Jeanne E. <jnoonan@mcguirewoods.com>; Hatch, Benjamin L. <BHatch@mcguirewoods.com>; Dougherty, V. Kathleen <vkdougherty@mcguirewoods.com>; Gollogly, Krystal Lynne <KGollogly@mcguirewoods.com>; Wingfield, Alan D. <Alan.Wingfield@troutman.com>; Lacy, Michael E. <Michael.Lacy@troutman.com>; Lynch, John C. <john.lynch@troutman.com>; Flowers, Elizabeth Spain <Liz.Flowers@troutman.com>; Knudsen, Kathleen M. <Kathleen.Knudsen@troutman.com>; Monica McCarroll <MMcCarroll@redgravellp.com>; jchapman@cwm-law.com; wrsnow@cwm-law.com; ddavenport@cwm-law.com; dhartnett@cwm-law.com; tara.reinhart@skadden.com; john.thornburgh@skadden.com; thomas.gentry@skadden.com; Stephanie Hunter <shunter@cwm-law.com>; Armond Joyner <ajoyner@cwm-law.com>; Stone, Jana K. <Jana.Stone@troutman.com>

**Subject:** RE: CSXT, et al v. NS, et al - Discovery Deficiencies

The password to access the production and log from my email below is:

**L5fPVp9rCTt2V**

Best,  
Ashley

**Ashley P. Peterson**

McGuireWoods LLP

T: +1 804 775 1190 | M: +1 804 201 6953

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**From:** Peterson, Ashley P.

**Sent:** Monday, March 23, 2020 2:25 PM

**To:** 'Cooper, Massie P.' <[Massie.Cooper@troutman.com](mailto:Massie.Cooper@troutman.com)>; Justus, J. Brent <[bjustus@mcguirewoods.com](mailto:bjustus@mcguirewoods.com)>; Noonan, Jeanne E. <[jnoonan@mcguirewoods.com](mailto:jnoonan@mcguirewoods.com)>; Hatch, Benjamin L. <[BHatch@mcguirewoods.com](mailto:BHatch@mcguirewoods.com)>; Dougherty, V. Kathleen <[vkdougherty@mcguirewoods.com](mailto:vkdougherty@mcguirewoods.com)>; Gollogly, Krystal Lynne <[KGollogly@mcguirewoods.com](mailto:KGollogly@mcguirewoods.com)>; Wingfield, Alan D. <[Alan.Wingfield@troutman.com](mailto:Alan.Wingfield@troutman.com)>; Lacy, Michael E. <[Michael.Lacy@troutman.com](mailto:Michael.Lacy@troutman.com)>; Lynch, John C. <[john.lynch@troutman.com](mailto:john.lynch@troutman.com)>; Flowers, Elizabeth Spain <[Liz.Flowers@troutman.com](mailto:Liz.Flowers@troutman.com)>; Knudsen, Kathleen M. <[Kathleen.Knudsen@troutman.com](mailto:Kathleen.Knudsen@troutman.com)>; [mmccarroll@redgravellp.com](mailto:mmccarroll@redgravellp.com); [ichapman@cwm-law.com](mailto:ichapman@cwm-law.com); [wrsnow@cwm-law.com](mailto:wrsnow@cwm-law.com); [ddavenport@cwm-law.com](mailto:ddavenport@cwm-law.com); [dhartnett@cwm-law.com](mailto:dhartnett@cwm-law.com); [tara.reinhart@skadden.com](mailto:tara.reinhart@skadden.com); [john.thornburgh@skadden.com](mailto:john.thornburgh@skadden.com); [thomas.gentry@skadden.com](mailto:thomas.gentry@skadden.com); Stephanie Hunter <[shunter@cwm-law.com](mailto:shunter@cwm-law.com)>; Armond Joyner <[ajoyner@cwm-law.com](mailto:ajoyner@cwm-law.com)>; 'jana.stone@troutman.com' <[jana.stone@troutman.com](mailto:jana.stone@troutman.com)>

**Subject:** RE: CSXT, et al v. NS, et al - Discovery Deficiencies

All,

The production described in CSXT's March 20 letter can be downloaded at the link below, and an updated privilege log is attached. The password to access the production and log will be sent separately.

[link omitted]

Please let me know if you run into any issues with the files. Once you've had a chance to review, let us know when you would like to meet and confer.

Best regards,

Ashley

**Ashley P. Peterson**

McGuireWoods LLP

T: +1 804 775 1190 | M: +1 804 201 6953

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**From:** Cooper, Massie P. <[Massie.Cooper@troutman.com](mailto:Massie.Cooper@troutman.com)>

**Sent:** Monday, March 23, 2020 9:13 AM

**To:** Justus, J. Brent <[bjustus@mcguirewoods.com](mailto:bjustus@mcguirewoods.com)>; Peterson, Ashley P. <[APeterson@mcguirewoods.com](mailto:APeterson@mcguirewoods.com)>; Noonan, Jeanne E. <[jnoonan@mcguirewoods.com](mailto:jnoonan@mcguirewoods.com)>; Hatch, Benjamin L. <[BHatch@mcguirewoods.com](mailto:BHatch@mcguirewoods.com)>; Dougherty, V. Kathleen <[vk dougherty@mcguirewoods.com](mailto:vk dougherty@mcguirewoods.com)>; Gollogly, Krystal Lynne <[KGollogly@mcguirewoods.com](mailto:KGollogly@mcguirewoods.com)>; Wingfield, Alan D. <[Alan.Wingfield@troutman.com](mailto:Alan.Wingfield@troutman.com)>; Lacy, Michael E. <[Michael.Lacy@troutman.com](mailto:Michael.Lacy@troutman.com)>; Lynch, John C. <[john.lynch@troutman.com](mailto:john.lynch@troutman.com)>; Flowers, Elizabeth Spain <[Liz.Flowers@troutman.com](mailto:Liz.Flowers@troutman.com)>; Knudsen, Kathleen M. <[Kathleen.Knudsen@troutman.com](mailto:Kathleen.Knudsen@troutman.com)>; [mmccarroll@redgravellp.com](mailto:mmccarroll@redgravellp.com); [jchapman@cwm-law.com](mailto:jchapman@cwm-law.com); [wrsnow@cwm-law.com](mailto:wrsnow@cwm-law.com); [ddavenport@cwm-law.com](mailto:ddavenport@cwm-law.com); [dhartnett@cwm-law.com](mailto:dhartnett@cwm-law.com); [tara.reinhart@skadden.com](mailto:tara.reinhart@skadden.com); [john.thornburgh@skadden.com](mailto:john.thornburgh@skadden.com); [thomas.gentry@skadden.com](mailto:thomas.gentry@skadden.com); Stephanie Hunter <[shunter@cwm-law.com](mailto:shunter@cwm-law.com)>; Armond Joyner <[ajoyner@cwm-law.com](mailto:ajoyner@cwm-law.com)>

**Subject:** RE: CSXT, et al v. NS, et al - Discovery Deficiencies

**\*\*EXTERNAL EMAIL; use caution with links and attachments\*\***

Brent,

We are in agreement to postpone the meet and confer. We look forward to hearing a specific time for production this afternoon or tomorrow morning.

Massie

**Massie P. Cooper**

**troutman sanders**

Direct: 804.697.1392

[massie.cooper@troutman.com](mailto:massie.cooper@troutman.com)

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**From:** Justus, J. Brent <[bjustus@mcguirewoods.com](mailto:bjustus@mcguirewoods.com)>

**Sent:** Monday, March 23, 2020 9:06 AM

**To:** Peterson, Ashley P. <[APeterson@mcguirewoods.com](mailto:APeterson@mcguirewoods.com)>; Cooper, Massie P. <[Massie.Cooper@troutman.com](mailto:Massie.Cooper@troutman.com)>; Noonan, Jeanne E. <[jnoonan@mcguirewoods.com](mailto:jnoonan@mcguirewoods.com)>; Hatch, Benjamin L. <[BHatch@mcguirewoods.com](mailto:BHatch@mcguirewoods.com)>; Dougherty, V. Kathleen <[vk dougherty@mcguirewoods.com](mailto:vk dougherty@mcguirewoods.com)>; Gollogly, Krystal Lynne <[KGollogly@mcguirewoods.com](mailto:KGollogly@mcguirewoods.com)>; Wingfield, Alan D. <[Alan.Wingfield@troutman.com](mailto:Alan.Wingfield@troutman.com)>; Lacy, Michael E. <[Michael.Lacy@troutman.com](mailto:Michael.Lacy@troutman.com)>; Lynch, John C. <[john.lynch@troutman.com](mailto:john.lynch@troutman.com)>; Flowers, Elizabeth Spain <[Liz.Flowers@troutman.com](mailto:Liz.Flowers@troutman.com)>; Knudsen, Kathleen M. <[Kathleen.Knudsen@troutman.com](mailto:Kathleen.Knudsen@troutman.com)>; [mmccarroll@redgravellp.com](mailto:mmccarroll@redgravellp.com); [jchapman@cwm-law.com](mailto:jchapman@cwm-law.com); [wrsnow@cwm-law.com](mailto:wrsnow@cwm-law.com); [ddavenport@cwm-law.com](mailto:ddavenport@cwm-law.com); [dhartnett@cwm-law.com](mailto:dhartnett@cwm-law.com); [tara.reinhart@skadden.com](mailto:tara.reinhart@skadden.com); [john.thornburgh@skadden.com](mailto:john.thornburgh@skadden.com); [thomas.gentry@skadden.com](mailto:thomas.gentry@skadden.com); Stephanie Hunter <[shunter@cwm-law.com](mailto:shunter@cwm-law.com)>; Armond Joyner <[ajoyner@cwm-law.com](mailto:ajoyner@cwm-law.com)>

**Subject:** RE: CSXT, et al v. NS, et al - Discovery Deficiencies

**EXTERNAL SENDER**

All,

As noted in our Friday letter, we hope to produce by early this week some of the documents that were identified by NS either with more limited redactions or as not privileged, along with a privilege log for the redacted documents identified by NS. We do not, however, anticipate producing those materials before our scheduled meet-and-confer today at noon.

In light of this, I propose postponing today's meet-and-confer until after we have produced these documents and the privilege log. We hope to provide a more precise estimate of when you can expect these materials either by the end of the day today or early tomorrow, at which point we can reschedule the meet-and-confer.

Best regards,  
Brent

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**From:** Peterson, Ashley P. <[APeterson@mcguirewoods.com](mailto:APeterson@mcguirewoods.com)>

**Sent:** Friday, March 20, 2020 4:01 PM

**To:** Cooper, Massie P. <[Massie.Cooper@troutman.com](mailto:Massie.Cooper@troutman.com)>; Noonan, Jeanne E. <[jnoonan@mcguirewoods.com](mailto:jnoonan@mcguirewoods.com)>; Hatch, Benjamin L. <[BHatch@mcguirewoods.com](mailto:BHatch@mcguirewoods.com)>; Dougherty, V. Kathleen <[vk dougherty@mcguirewoods.com](mailto:vk dougherty@mcguirewoods.com)>; Justus, J. Brent <[bjustus@mcguirewoods.com](mailto:bjustus@mcguirewoods.com)>; Gollogly, Krystal Lynne <[KGollogly@mcguirewoods.com](mailto:KGollogly@mcguirewoods.com)>; Wingfield, Alan D. <[Alan.Wingfield@troutman.com](mailto:Alan.Wingfield@troutman.com)>; Lacy, Michael E. <[Michael.Lacy@troutman.com](mailto:Michael.Lacy@troutman.com)>; Lynch, John C. <[john.lynch@troutman.com](mailto:john.lynch@troutman.com)>; Flowers, Elizabeth Spain <[Liz.Flowers@troutman.com](mailto:Liz.Flowers@troutman.com)>; Knudsen, Kathleen M. <[Kathleen.Knudsen@troutman.com](mailto:Kathleen.Knudsen@troutman.com)>; [mmccarroll@redgravellp.com](mailto:mmccarroll@redgravellp.com); [jchapman@cwm-law.com](mailto:jchapman@cwm-law.com); [wrsnow@cwm-law.com](mailto:wrsnow@cwm-law.com); [ddavenport@cwm-law.com](mailto:ddavenport@cwm-law.com); [dhartnett@cwm-law.com](mailto:dhartnett@cwm-law.com); [tara.reinhart@skadden.com](mailto:tara.reinhart@skadden.com); [john.thornburgh@skadden.com](mailto:john.thornburgh@skadden.com); [thomas.gentry@skadden.com](mailto:thomas.gentry@skadden.com); Stephanie Hunter <[shunter@cwm-law.com](mailto:shunter@cwm-law.com)>; Armond Joyner <[ajoyner@cwm-law.com](mailto:ajoyner@cwm-law.com)>

**Subject:** RE: CSXT, et al v. NS, et al - Discovery Deficiencies

Counsel,

Please see attached.

Best regards,  
Ashley

**Ashley P. Peterson**

McGuireWoods LLP

T: +1 804 775 1190 | M: +1 804 201 6953

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**From:** Cooper, Massie P. <[Massie.Cooper@troutman.com](mailto:Massie.Cooper@troutman.com)>

**Sent:** Tuesday, March 10, 2020 8:11 PM

**To:** Noonan, Jeanne E. <[jnoonan@mcguirewoods.com](mailto:jnoonan@mcguirewoods.com)>; Peterson, Ashley P. <[APeterson@mcguirewoods.com](mailto:APeterson@mcguirewoods.com)>; Hatch, Benjamin L. <[BHatch@mcguirewoods.com](mailto:BHatch@mcguirewoods.com)>; Dougherty, Vera Kathleen <[vk dougherty@mcguirewoods.com](mailto:vk dougherty@mcguirewoods.com)>; Justus, J. Brent <[bjustus@mcguirewoods.com](mailto:bjustus@mcguirewoods.com)>; Gollogly, Krystal Lynne <[KGollogly@mcguirewoods.com](mailto:KGollogly@mcguirewoods.com)>; Wingfield, Alan D. <[Alan.Wingfield@troutman.com](mailto:Alan.Wingfield@troutman.com)>; Lacy, Michael E. <[Michael.Lacy@troutman.com](mailto:Michael.Lacy@troutman.com)>; Lynch, John C. <[john.lynch@troutman.com](mailto:john.lynch@troutman.com)>; Flowers, Elizabeth Spain <[Liz.Flowers@troutman.com](mailto:Liz.Flowers@troutman.com)>; Knudsen, Kathleen M. <[Kathleen.Knudsen@troutman.com](mailto:Kathleen.Knudsen@troutman.com)>; [mmccarroll@redgravellp.com](mailto:mmccarroll@redgravellp.com); [jchapman@cwm-law.com](mailto:jchapman@cwm-law.com); [wrsnow@cwm-law.com](mailto:wrsnow@cwm-law.com); [ddavenport@cwm-law.com](mailto:ddavenport@cwm-law.com); [dhartnett@cwm-law.com](mailto:dhartnett@cwm-law.com); [wespivey@kaufcan.com](mailto:wespivey@kaufcan.com); [cjbelote@kaufcan.com](mailto:cjbelote@kaufcan.com); [tara.reinhart@skadden.com](mailto:tara.reinhart@skadden.com); [john.thornburgh@skadden.com](mailto:john.thornburgh@skadden.com); [thomas.gentry@skadden.com](mailto:thomas.gentry@skadden.com); Stephanie Hunter <[shunter@cwm-law.com](mailto:shunter@cwm-law.com)>; Armond Joyner <[ajoyner@cwm-law.com](mailto:ajoyner@cwm-law.com)>

**Subject:** CSXT, et al v. NS, et al - Discovery Deficiencies

**\*\*EXTERNAL EMAIL; use caution with links and attachments\*\***

Please see the attached correspondence.

**Massie P. Cooper**

Direct: 804.697.1392

[massie.cooper@troutman.com](mailto:massie.cooper@troutman.com)

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**troutman sanders**

1001 Haxall Point, Suite 1500

Richmond, VA 23219

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CFS Law Monitor

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**A HIGHER COMMITMENT TO CLIENT CARE**

Effective April 1, 2020, Troutman Sanders will combine with Pepper Hamilton to become Troutman Pepper Hamilton Sanders LLP (Troutman Pepper). My email address and phone number will remain unchanged following the combination. The new Troutman Pepper will offer expanded capabilities and practice strengths while continuing to deliver powerful solutions to clients' legal and business issues with a hallmark focus on client care.

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